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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3rd day of April 1998

PRESENT

THE HON'BLE MR. R.P. SETHI, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION No.7780/1996

BETWEEN:

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1. Mrs. Sunanda Murthy,
No.180, 7 'C' Main,
III Block, 4th Stage,
Basaveshwara Nagar,
Bangalore-560079.
 2. Mr. Gurumurthy,
No.126, 7th B Main,
III Block, 4th Stage,
Basaveshwaranagar,
Bangalore-560079.
 3. Narasimhamurthy,
No.11/1, 17th Cross,
4th Stage, 4th Block,
Basaveshwaranagar,
Bangalore-560079.
 4. Gangamma,
175, 4th B Main,
4th Stage, 4th Block,
Basaveshwaranagar,
Bangalore-560079.
 5. Vijay D Kotian,
No.92, 17th Cross,
4th Block, 4th Stage,
Basaveshwaranagar,
Bangalore-560079.
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6. G.R.Chandrashekar,
No.88, 17th Cross,
4th Block, 4th Stage,
Basaveshwaranagar,
Bangalore-560079.

..PETITIONERS

(By Sri A.S. Bopanna, Advocate)

AND:

1. State of Karnataka
represented by its Secretary,
Department of Urban
Development,
Vidhana Soudha,
Bangalore-560001.

2. The Bangalore Development
Authority, represented by
its Chairman, Kumara Park
West, T.Chowdaiah Road,
Bangalore-560 001.

3. Islamic Welfare Trust,
No.55, MIG KHB Colony,
2nd Stage, Basaveshwara-
nagar, Bangalore-560079,
represented by its
President.

..RESPONDENTS

(By Sri B.V.Acharya Sr. advocate
with sri A.Lobo for R-3,
Sri N.K. Patil for R-2,
Sri A.V.S. Reddy, AGA for R-1)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to declare that the allotment of the area in Sy.No.39 & 47 (shown as Sy.No.81/2 & 81/6 in village map) allotted vide Annexures-A & B in favour of R-3 by R-2 as null and void; to direct R-2 to preserve the Civic Amenity site in Sy.No.39 & 47 as Sanna Kadu as presently reserved.

This Writ petition as having been heard and reserved for pronouncement of order this day, Gopala Gowda J, delivered the following:

O R D E R

This writ Petition is filed by the petitioners in public interest of the residents of West of Chord Road, IV Stage, IV Block, seeking to declare that the allotment of an area measuring 1494.61 sq.mts. in Sy.No.39 and 47 vide Annexures A and B in favour of the third respondent by the Bangalore Development as null and void and for a writ in the nature of mandamus directing the second respondent to preserve the Civic Amenity site in question as "Sanna Kadu" as has been presently reserved, urging the following facts:

The petitioners are public spirited persons on their own behalf and also on behalf of the residents of the said layout have approached this Court aggrieved by the action of the second respondent in allotting the alleged Civic Amenity site in question in favour of the third respondent, contending that the



allotment is contrary to law. According to them, the West of Chord Road, IV Stage was formed by the second respondent Authority under the scheme of development in Sy.No.39 and 47 inclusive of Sy.Nos. 81/2 and 81/6 of Agrahara Dasarahalli in the village map. The petitioners are the allottees of house sites in the said layout. As per the Bangalore Development Authority (Allotment of Civic Amenity Sites) and Rules, 1989 (hereinafter called as the Rules in short) has reserved certain area as a 'Civic Amenity Sites' for the purpose of parks and play-grounds. In support of the said submission, petitioners have produced Layout plan at Annexure-C. The residents of the erstwhile Agrahara Dasarahalli had used the open area in question which is reserved as Civic Amenity Site, for the purpose of Children's burial ground. The said area was left as an open area after the formation of the West of Chord Road, IV Stage, IV Block, Basaveshwarnagar. At an earlier point of time certain residents of the said area installed an idol of 'Lord Ganesha' in Ganesha Temple and developed a garden around the temple.




The second respondent lodged a police complaint against the same and demolished it. The authority has asserted that the area in question is a Civic Amenity Site for development of park and retaining the same as green area for the benefit of the residents of the locality and the second respondent planted trees with the help of Horticulture Department and the same has been named as 'Sanna Kadu' (Mini Forest). A board has also been installed indicating that the said site is a Civic Amenity Site and the same was also called as HTC Park.

2. The petitioners during the first week of February 1996 noticed some activity in and around the said site was going on and they questioned at that time they disclosed that they have been instructed by the third respondent to clear the area to take possession of the same and thereafterwards, they approached the second respondent for clarification and for further details with regard to the site in question. The petitioners were furnished with the copies of the allotment letters and possession certificate issued in favour of the third




respondent. When the petitioners questioned against the second respondent's action, they sought to justify their action stating that the site in question has been allotted in favour of the third respondent, in pursuance of the resolution bearing Sl.No.295/94, the petitioners contended that the resolution passed by the second respondent is contrary to law. For the reason that the second respondent is not authorised in law for grant of the same in favour of the third respondent as it is a private body. It is also further contended that the site in question is a Civic Amenity site as defined under section 2(bb) of the B.D.A. Act, 1976 which was reserved as Sanna Kadu. Section 16(1) of the Act provides for reserving 15% of the area as play-grounds and parks and certain areas have been left open and the said area is situated in the High Tension Electrical line. Therefore, same would not be available for the benefit of the general public. The same has been cordoned off by fencing the site in question is only area which is capable of being enjoyed as an open area park.

3. The impugned allotment of site in



question in favour of the third respondent is contrary to the BDA (Allotment of Civic Amenity Site) Rules of 1989 has not been followed and the allotment is contrary to Section 38(A) of the Act. The impugned allotment order has been made in favour of the third respondent with clandestinely without due publicity as required under Rule 3(3) of the Rules and the requirement of the Rules had not been complied with, while passing the resolution and allotting the civic amenity site in question in favour of third respondent for starting an Arabic School as it would not benefit the general public of the locality.

4. Per contra, the learned counsel appearing for the second respondent and the third respondents have filed their counter statement. Second respondent sought to justify its action contending that the site in question has been reserved in the layout plan as a civic amenity site but it has not been marked for any specific purpose. No doubt, it is also further stated that the site has been fenced with and tree planting has been done to protect the property from encroachment



and to prevent unauthorised construction by strangers. As per the letter dated 23-6-1989 the Engineering Member, addressed to the third respondent stated that as per recent notification of the Government dated 15.3.1989 due publicity would be given in the newspapers both in English and Kannada having wide circulation in the city for the available civic amenity sites specifying the purpose for which it is earmarked. Accordingly, a notification was issued publishing the availability of the civic amenity site on 20th January 1990 and the civic amenity site No.13 of west of Chord Road reserved for mosque was published in the Deccan Herald dated 25.1.1990. The third respondent has registered its requirement by paying Rs.5,000/- on 3.2.1990 and applied in the prescribed application. Due to the unauthorised construction on the above said site, third respondent has sought for an alternative site for construction of mosque which request was pending for consideration.

5. It is also further stated that the second respondent authority has issued another notification dated 25-8-1994 publishing the



availability of the civic amenity site in the 'Indian Express' newspaper dated 26-8-1994 and another newspaper which are having wide circulation in the city of Bangalore. The allotment committee of the second respondent in its meeting held vide Subject No.22 dated 28-9-1994 resolved to allot the same in favour of the third respondent for starting an Arabic School on their fresh notification dated 9-9-1994 and thereafterwards, the allotment order dated 10.3.1995 was issued lease-cum-agreement was registered in its favour on 23-8-1995 and the possession certificate dated 1-9-1995 was also issued leasing the premises for 30 years in favour of the third respondent. Therefore, it would contend that there is no violation of any of the allotment rules, in allotting the sites in question in favour of the third respondent. Therefore, the authority has prayed to reject the writ petition. All other averments made by the petitioners had been denied by the first respondent. The third respondent has also filed its detail counter producing relevant documents in support of their case in nutshell. It is stated that the



resolution passed by the second respondent in allotting the sites is in accordance with the allotment rules and the same is in accordance with law. Therefore, requested this Court not to exercise its extra-ordinary, jurisdictional power under Article 226 of the Constitution of India to quash the same. It has been contended that the third respondent is a public trust registered in the year 1985. As on the date of filing the counter, it has been stated that 600 muslim families are permanent residents of the said area. Further, it is stated that there is no mosque or Arabic School within 3 kilometers radius of Basaveshwaranagar and most of them are from the poorer strata of the society. It is also further contended that one of the basic contents of the preamble of the Constitution is that to safeguard and protect secularism of this country which has been held to be the basic future of the Constitution of India. The allotment of site in favour of the third respondent is for public purpose which need not be interferred with by this Court as the second respondent in conformity with the



allotment rules and in exercise of its power under the Act, allotted the same in its favour. It is also further submitted that in pursuance of the allotment, the lease-~~con~~[✓]-agreement was executed which is produced at Annexure-R4 and it has been put in possession of the property in question and katha also transferred in its name. In support of the same, it has produced documents at Annexure-R5 and R6. Necessary payments towards the site in question has been paid to the second respondent as per Annexures-R7 to R12. As per Clause 7 of lease-agreement referred to above, the third respondent was required to obtain licence to start construction within six months thereof and complete the same within three years, failing which the allotment made in its favour would be cancelled. At that stage, the petitioners have approached this Court, obtained interim order from putting up any construction upon the civic amenity site. It is also further contended that the writ petition not maintainable and relief cannot be granted in their favour as the same is mis-conceived. There is no public interest involved, the petition is filed with a malafide intention,



and there is no public interest involved in this petition. It is also further contended that civic amenity site in question is not reserved as a "Sannakadu", but the same is specifically ear-marked for the purpose of an Arabic School which is evident from the notification dated 25.8.1994 Annexure R-3. The said notification was published in the newspapers, as required under the rules which has got circulation in the Bangalore city. Therefore, the petitioners are deemed to have got constructive knowledge of the fact that the civic amenity site in question was reserved for the specific purpose for ~~the~~ Arabic School in the year 1994 itself. This fact has been suppressed by the petitioners in the writ petition and stated incorrect facts in the writ petition.

6. The contention of the petitioners that the civic amenity site required to be allotted only to the governmental agencies ^{and} (not to the private body as misreading of the provisions of the Act and relevant Rules. Clause (d) of Section 16(1) of the Act states that atleast 15% of the layout area ^{should be} ~~is~~ reserved for public

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parks and play-grounds, [✓] The second part of the said clause ~~which~~ [✓] requires an additional extent of atleast 10% of the layout area to be reserved for civic amenities. The second respondent submits that there are 5 parks totalling over 10 acres and 3 playgrounds totalling over 3 acres in the vicinity. Petitioners cannot question the action of the second respondent in reserving the civic amenity site in question in favour of ~~an~~ [✓] Arabic School after following the requirement of the relevant rules. If at all, they were aggrieved would have earlier moved the concerned authority seeking change of the land use [✓] and modification of the layout plan of the second respondent authority, admittedly it has not been done. Therefore, the respondents submit that there is no violation of the provisions of Section 38-A of the Act and that ^{the Authority has} ~~neither~~ [✓] followed the relevant rules applicable to the ^{Case} ~~rules~~ [✓]. Therefore, they have prayed for dismissing the writ petition with exemplary costs.

7. After hearing the learned Counsel appearing for the petitioners and the contesting

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respondent in whose favour the allotment has been made, we are of the opinion that the civic amenity site as contemplated under section 16(1)(d) of the Act relevant rules applicable to the case has been reserved for the purpose of allotment and the same was allotted in favour of the third respondent for establishing ~~an~~ Arabic School in the site in question.

8. As per the Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989, the civic amenity site in question was reserved for specific purpose of establishment of ~~an~~ Arabic School in the notification published in the newspapers referred to above. As per the records produced by the second respondent development authority and the statement of objections by the 2nd and 3rd respondent, it is very clear that the third respondent was the sole applicant for the allotment of the site in its favour for establishing an arabic school. All the requirements of the provisions of the Act and Rules by the Authority were ^{Complied with} ~~satisfied~~. The second respondent Authority has allotted the site in question on 5.12.1994 and the



second respondent entered into lease agreement with the third respondent on 18.8.1995 as per Annexure R-4, katha in respect of the property was also transferred in its name. Possession certificate and the katha certificates have been issued in favour of the third respondent and it has paid all the payments to the second respondent. The site in question in the layout plan was not ear-marked for any other purpose as per the comprehensive development plan produced by the second respondent. The site in question falls in the residential zone, in the said zone an establishment of either a school or place of worship is permissible. The third respondent is a public trust, the site in question was allotted in its favour in lieu of site No.13 in the West of Chord Road, 3rd stage, which was earlier notified for the purpose of mosque.

9. The various authorities relied upon by the petitioners' counsel viz., 1993 Supp. (1) SCC page 672 SENGUNTHAR TRUST vs. B.D.A., 1991(4) SCC page 54 BANGALORE MEDICAL TRUST vs. B.S. MUDDAPPA & OTHERS, ILR 1992(1) Kar. 174



M.B.RAMACHANDRAN vs. STATE OF KARNATAKA are not applicable to the facts of this case, in view of the fact that in the layout plan, no doubt, the site in question was not ear-marked specifically for any other purposes but it was shown as open space. As per Rule 3(3) of the Rules referred to above, Development Authority at Annexure R-3 has reserved the site in question for establishment of an Arabic School. We have perused the affidavit filed by one Sri.Puttaswamy, Assistant Executive Engineer, No.2, Special Division of the authority, in the said affidavit, it is specifically stated that as per the sanctioned layout plan in an area of 7 acres 4 guntas in Sy.No.39 and 47 of Agraharadasarahalli village, the layout was formed. An extent of 37.64% of the land has been utilised for the residential purpose and an extent of 48.68% has been utilised for formation of roads and the remaining 15.68% of the land has been ear-marked for parks and open space. The same is in conformity with Section 16(1)(d) of the Act. In an area of 15.68% of the total land is reserved for parks and open space, out of that area the site in question was reserved

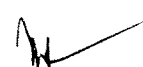


for allotment of an Arabic School and the same was allotted in favour of the third respondent after following the procedure contemplated under the Rules. The area has been shown in the green ink as parks and open spaces in the layout plan prepared in respect of the layout. The site in question has been also shown in the said layout plan. He has further stated the area officers had put up board describing it as a "Sannakadu", but the same is either ear-marked or reserved for that purpose in the layout plan. The said board was installed only with a view to protect the encroachment and prevent unauthorised construction by the strangers. Therefore, the site which was allotted in favour of the third respondent was not reserved for "Sannakadu". It is not the case of the petitioners in this writ petition that the required area as contemplated under Section 16(1)(d) of the Act has not been reserved for civic amenity purposes in the layout plan such as parks, playgrounds and open space. From the records and the averments made in the statement of objections of the Authority and the layout plan produced by it,



it is very clear that the site in question was reserved for establishing an Arabic School as per Rule 3(3) of the Rules. It is not the case of the petitioners that the area which was reserved and shown as open space in the layout plan, subsequently the same was reserved for establishing an Arabic School as per Rule 3(3) of the Rules is not seriously disputed by them by placing relevant material documents before this Court. Apart from the above said relevant material facts, it is ~~not~~ the case of the petitioners that site in question has been made use of other than the purpose for which it has been reserved by the Authority in exercise of its power under Rule 3(3) of the Rules and the same is opposed to law. In this view of the matter, the judgments relied upon by the petitioners will not render any assistance in support of their case.

10. For the aforesaid reasons, the Development Authority in exercise of its powers has ear-marked out of total area of the lands of 16.68% area of land was reserved for parks and open space within which the site in question



has been reserved for the purpose of establishing an Arabic School and the same was allotted in favour of third respondent, after following the procedure contemplated in law, by giving wide publicity inviting the applications from public. No other applicants except the third respondent were before the second respondent claiming the allotment of said site in their favour. Therefore, the second respondent authority in exercise of its powers has allotted the site in question in favour of the third respondent which is a public trust, allotment of the site in question is for the public purpose. Therefore, the grievance of the petitioners that the second respondent has contravened the allotment rules and the third respondent was not entitled for allotment of site in question in its favour are not tenable in law. In our view, on the basis of the records and the averments made by the second and third respondents and the relevant documents produced by the third respondent in support of justification of allotment of site made by the second respondent in favour of the public trust is legal and valid. We are satisfied that the allotment of site in question in favour of the third respondent is



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not bad as the second respondent has not contravened either the provisions of the Act or the Rules applicable to the case. Further in view of the undisputed facts, it cannot be said that the allotment of site in favour of third respondent is bad in law. Therefore, we pass the following order:

The petitioners have not made out a case for issuance of writ of certiorari sought for by them in this writ petition. The allotment of site in favour of the third respondent is in the public interest, on the other hand, we are of the opinion that there is no public interest involved in this writ petition. Therefore, the writ petition is liable to be dismissed. Accordingly, writ petition is dismissed, but no costs.

Sd/-
JUDGE

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